

TITLE 326 AIR POLLUTION CONTROL BOARD

**FINDINGS AND DETERMINATION OF THE
COMMISSIONER PURSUANT TO IC 13-14-9-7
AND SECOND NOTICE OF COMMENT PERIOD
#02-88(APCB)**

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE REDESIGNATION OF CLARK AND FLOYD COUNTIES TO ATTAINMENT OF THE ONE HOUR OZONE STANDARD

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to rules concerning the redesignation of Clark and Floyd Counties to attainment of the one (1) hour ozone standard. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 1-4-1; 326 IAC 4-1-4.1; 326 IAC 8-2-9; 326 IAC 13-3-1.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

On October 9, 2001, the U.S. Environmental Protection Agency (U.S. EPA) announced that Clark and Floyd Counties, part of the Louisville Moderate Ozone Nonattainment Area, had monitored attainment of the national air quality standard for ozone and had met all applicable requirements of the 1990 Clean Air Act Amendments.

As a result, U.S. EPA approved Indiana's request to redesignate the area to attainment of the national air quality standard. U.S. EPA also approved a similar request from the Commonwealth of Kentucky for the Kentucky portion of the area. The final approval was published in the Federal Register on October 23, 2001 (66 FR 53665). This action was effective November 23, 2001.

U.S. EPA's action was based on three (3) years of complete, quality assured, outdoor air monitoring data for 1998, 1999, and 2000. Preliminary data for the 2001 ozone season show that the Louisville area continues to attain the one (1) hour ozone standard.

U.S. EPA also approved the maintenance plan for Clark and Floyd Counties, which includes maintaining existing programs and air monitoring. The maintenance plan requires that certain rules specific to Clark and Floyd Counties remain in effect.

This rulemaking incorporates into state rules 66 FR 53665 (October 23, 2001), the final approval for redesignating Clark and Floyd Counties to attainment of the one (1) hour ozone standard. Until the state rulemaking is effective, these counties will be subject to the state's nonattainment rules, including the permitting rules. Additionally, this rulemaking amends the state rules to remove specific references to Clark and Floyd Counties as nonattainment areas for ozone. This rulemaking clarifies that rules included in the maintenance plan for Clark and Floyd Counties continue to apply to the redesignated area.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on the redesignation of Clark and Floyd Counties to attainment of the one (1) hour ozone standard. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (2) The draft rule is hereby incorporated into these findings.

Lori F. Kaplan
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:
#02-88(APCB)Clark/Floyd Redesignation
Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by May 1, 2002.

Additional information regarding this action may be obtained from Chrystal Wagner, Rules Development Section, Office of Air Quality, (317) 234-1203 or (800) 451-6027, press 0, and ask for extension 4-1203 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-4-1, PROPOSED TO BE AMENDED AT 24 IR 4067, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-1 Designations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. The air pollution control board incorporates by reference 40 CFR 81.315* and 66 FR 53665 (October 23, 2001)* concerning attainment status designations.

~~*This document is~~ *These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341)

SECTION 2. 326 IAC 4-1-4.1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 4-1-4.1 Open burning approval; criteria and conditions

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 4-21.5; IC 13-12; IC 13-17-9

Sec. 4.1. (a) Burning not exempted by section 3 or 4 of this rule may be authorized by the issuance of an approval by the commissioner or the commissioner's designated agent after consideration of an approval application. Such burning may be authorized for, but not limited to, the following:

- (1) Burning for the purpose of fire training.
- (2) Burning of natural growth derived from a clearing operation, such as removal of natural growth for change in use of the land.
- (3) Burning of highly explosive or other dangerous materials for which no alternative disposal method exists or where transportation of such materials is hazardous.
- (4) Burning of clean wood products.
- (5) Burning of natural growth for the purpose of land management.

(b) The following criteria may be considered for approval under this section:

- (1) The applicant has demonstrated that alternative methods for disposal are impractical or prohibitively expensive.
- (2) There are not more than five (5) residences or structures within five hundred (500) feet of the proposed burning site.
- (3) There have been no open burning violations at the site of the proposed burning or by the applicant.
- (4) If the application involves a structure for fire training, the structure has not been demolished prior to training activities.
- (5) The burning site is located in a county not designated as a nonattainment area for PM₁₀ or ozone, **and is not located in Clark or Floyd County**. The commissioner or the commissioner's agent may allow open burning in ~~such nonattainment~~ these areas, subject to conditions necessary to protect air quality.

(c) No approval shall be granted at any time for residential burning in Clark, Floyd, Lake, or Porter County.

(d) Any approval shall be subject to the following conditions unless otherwise stipulated in the open burning approval letter:

- (1) Only clean wood products shall be burned.
- (2) No asbestos-containing material shall be burned.
- (3) No burning shall be conducted during unfavorable meteorological conditions, such as:
 - (A) high winds, temperature inversions, or air stagnation; or
 - (B) when a pollution alert or ozone action day has been declared.
- (4) Burning shall be conducted during daylight hours only and all fires shall be extinguished prior to sunset.
- (5) If at any time the fire creates:
 - (A) an air pollution problem;
 - (B) a threat to public health;
 - (C) a nuisance; or
 - (D) a fire hazard;
 the burning shall be extinguished.
- (6) The local fire department and health department must be notified at least twenty-four (24) hours in advance of the date, time, and location of the burning.
- (7) The approval letter shall be made available at the burning site to state and local officials upon request except during emergency burning.
- (8) Adequate fire fighting equipment shall be on-site for extinguishing purposes during burning times.
- (9) No burning shall take place within:
 - (A) one hundred (100) feet of any structure or powerline; or
 - (B) three hundred (300) feet of a frequently traveled road, fuel storage area, or pipeline.
- (10) Fires must be attended at all times until completely extinguished.
- (11) All burning must comply with other federal, state, or local laws, regulations, or ordinances, including 40 CFR 61 Subpart M* (National Emissions Standards for Asbestos).
- (12) No waste that is regularly generated as a result of a routine business operation shall be burned.
- (13) The material to be burned shall not exceed one thousand (1,000) cubic feet.

(e) An approval letter shall be valid for no longer than one (1) year from the date of issuance. However, an approval letter may be valid for as long as five (5) years if the approval application is accompanied by an open burning plan. The plan shall:

- (1) contain a description of the open burning proposed for the period of time for which an approval letter is sought; and
- (2) be incorporated as a condition of the approval letter under subsection (d) or (f).

Any change in the plan must receive an additional approval letter, unless the change is to reduce open burning, or the change is to conduct burning exempted under section 3 of this rule. The plan shall be available for review upon the request by the department.

(f) The commissioner or the commissioner's designated agent may add conditions to an approval letter, as necessary, to prevent a public nuisance or protect the public health or the environment. Such conditions may be based on local air quality conditions, including whether the area is a nonattainment county as defined in 326 IAC 1-4-1 or has been redesignated from nonattainment to attainment status.

(g) A decision on the open burning approval letter is subject to IC 4-21.5 (Administrative Orders and Procedures Act).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 4-1-4.1; filed Jul 30, 1996, 2:00 p.m.: 19 IR 3343; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)**

SECTION 3. 326 IAC 8-2-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-2-9 Miscellaneous metal coating operations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
 Affected: IC 13-15; IC 13-17

Sec. 9. (a) This section is applicable to the surface coating of the following:

- (1) Large and small farm machinery.
- (2) Small household appliances.
- (3) Office equipment.
- (4) Industrial machinery.
- (5) Any other industrial category which coats metal parts or products under the Standard Industrial Classification Code of major groups #33, #34, #35, #36, #37, #38, and #39.

(b) This section is not applicable to the surface coating of the following metal parts and products or to the following types of coating except as indicated in subsection (c):

- (1) Any metal parts or products limited by other sections of this rule.
- (2) Exterior of airplanes.
- (3) Automobile refinishing.
- (4) Customized top coating of automobiles and trucks, if production is less than thirty-five (35) vehicles per day.
- (5) Exterior of marine vessels.
- (6) Maintenance coatings of production equipment.
- (7) The application of adhesives or preparation of adhesives.
- (8) Lubricants used to prevent sticking of internally moving parts.
- (9) Chromium plated plastics.
- (10) The application of coatings to burial caskets (Standard Industrial Classification Code 3995) if the source is not located in or adjacent to a county designated as nonattainment for ozone, **or if the source is not located in or adjacent to Clark or Floyd County.**

(c) Commencing July 1, 1991, the operations described in subsection (b)(6) through (b)(9) shall comply with the requirements of this section.

(d) No owner or operator of a facility engaged in the surface coating of miscellaneous metal parts and products may cause, allow, or permit the discharge into the atmosphere of any volatile organic compounds in excess of the following:

- (1) Fifty-two hundredths (0.52) ~~kilograms~~ **kilogram** per liter (four and three-tenths (4.3) pounds per gallon) of coating, excluding water, delivered to a coating applicator that applies clear coatings. A clear coating is a coating that lacks color or opacity and is

transparent and uses the undercoat as a reflectant base or undertone color.

- (2) Forty-two hundredths (0.42) ~~kilograms~~ **kilogram** per liter (three and five-tenths (3.5) pounds per gallon) of coating excluding water, delivered to a coating applicator in a coating application system that is air dried or forced warm air dried at temperatures up to ninety (**90**) degrees Celsius (~~90°C~~) (one hundred ninety-four (**194**) degrees Fahrenheit) (~~194°F~~).

- (3) Forty-two hundredths (0.42) ~~kilograms~~ **kilogram** per liter (three and five-tenths (3.5) pounds per gallon) of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings. Extreme performance coatings are coatings designed for exposure to temperatures consistently above ninety-five (**95**) degrees Celsius, (~~95°C~~), detergents, abrasive or scouring agents, solvents, corrosive atmospheres, outdoor weather at all times, or similar environmental conditions.

- (4) Thirty-six hundredths (0.36) ~~kilograms~~ **kilogram** per liter (three (3) pounds per gallon) of coating, excluding water, delivered to a coating applicator for all other coatings and coating application systems.

(e) If more than one (1) emission limitation in subsection (d) applies to a specific coating, then the least stringent emission limitation shall be applied.

(f) Solvent sprayed from application equipment during cleanup or color changes shall be directed into containers. Such containers shall be closed as soon as such solvent spraying is complete, and the waste solvent shall be disposed of in such a manner that evaporation is minimized. (Air Pollution Control Board; 326 IAC 8-2-9; filed Feb 9, 1988, 2:07 p.m.: 11 IR 1736; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2534; filed Apr 18, 1990, 4:55 p.m.: 13 IR 1678; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

SECTION 4. 326 IAC 13-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 13-3-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
 Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to:

- (1) all refiners, importers, carriers, or terminals who supply gasoline for use in the Clark and Floyd Counties ~~ozone nonattainment area~~ between May 1 and September 15 of each calendar year beginning in 1995; and
- (2) all retail stations and other end users who sell or dispense gasoline in Clark or Floyd ~~Counties~~ **County** between June 1 and September 15 of each calendar year beginning in 1995.

(b) If federal reformulated gas (RFG) is required by operation of federal law to be sold in Clark and Floyd Counties or if the governor elects to participate in the RFG program, this rule shall no longer apply after the date that RFG is required to be sold. The department shall make all reasonable efforts to notify the affected parties listed in this section no later than thirty (30) days after federal law requires RFG to be sold or the governor's election to participate in the RFG program. (Air Pollution Control Board; 326 IAC 13-3-1; filed Jul 6, 1995, 11:30 a.m.: 18 IR 2738; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on June 5, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on new rule 326 IAC 1-2-37.5, concerning the "maintenance area" definition, and amendments to rules 326 IAC 1-4-1, concerning designations; 326 IAC 4-1-4.1, concerning open burning approval, criteria, and conditions; 326 IAC 8-2-9, concerning miscellaneous metal coating operations; and 326 IAC 13-3-1, concerning applicability.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule and amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Chrystal Wagner, Rule Development Section, Office of Air Quality, (317) 234-1203 or (800) 451-6027, press 0, and ask for extension 4-1203 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855. TDD: (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.